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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,411	10/21/2003	Gary O. Maupin	05500-00073-USC PM00028-C	5949
23416	7590	11/18/2004	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP P O BOX 2207 WILMINGTON, DE 19899			SMITH, KIMBERLY S	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/690,411

Applicant(s)

MAUPIN ET AL.

Examiner

Kimberly S Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/23/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

1. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification or in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)). The specific reference to any prior nonprovisional application must include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number.

Specification

2. The disclosure is objected to because of the following informalities: page 3, line 9: replace “Are” with - -are- -, page 3, line 18: replace “sidewalls” with - -sidewall- -; page 5, line 14: replace “supported” with - -support- -; page 6, line 5: replace the first “94” with - -92- -.

Appropriate correction is required.

Claim Objections

3. Claim 1 is objected to because of the following informalities: line 3: it appears the word “application” has been inserted where the word - -applicator- -would be appropriate for proper antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites an apparatus for applying a chemical to rodents within the preamble wherein the term chemical is considered functional language. However, the chemical is positively recited within the body of the claim. It is unclear as to whether the Applicant is claiming an apparatus that is used for applying a chemical or if the Applicant is claiming an apparatus in combination with a chemical.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-5, 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Talley, US Patent 5,027,747 (submitted with Information Disclosure Statement).

Talley discloses an apparatus for applying a chemical comprising an enclosure (35) having a peripheral opening (28) including an applicator (20) comprising a flexible web (30) having a chemical on the web; wherein the web comprises a fabric; wherein the applicator

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includes an upper horizontal support member (24); wherein the fabric includes vertical slits extending from an edge opposite the horizontal support member; wherein the fabric includes at least one opening extending from an edge of fabric (i.e. the space located adjacent each wicking member (30)) having a dimension smaller than the rodent (i.e. as the members are abutting each other, the distance is consistent with being less than that of a rodent); wherein the support beam is provided across the passageway for holding the applicator and the web is arranged to engage and be suspended from the support beam; wherein the applicator has an adhesive strip along an upper edge (32) for adhering to the top wall of the enclosure. Note that adhesive is defined as tending to remain in association. As the strip (32) allows the applicator to tend to remain in association with the top wall of the enclosure, it meets the limitation of an adhesive strip.

8. Claims 1, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Crawford, US Patent 987,433.

Crawford discloses an apparatus for applying a chemical comprising an enclosure having an opening including a applicator (C) comprising a flexible web having a chemical on the web wherein the passage includes a slot (C') for receiving ends of a support member (B') and suspending the web across the passage; wherein there is provided a support beam "B") across the passageway for holding the applicator

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Talley, US Patent 5,027,747.

Talley discloses the invention substantially as claimed. However, Talley does not disclose the opening in the web is semicircular or triangular in shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the opening of any shape, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. Reference Pinkalla et al., US Patent 5,542,463 for basis of known modifications in web openings.

Allowable Subject Matter

11. Claim 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pinkalla et al., (5,542,463), Knapp (US 3,364,900), Ragsdale (US 3,116,717), Hamilton (US 3,071,111), Davis (US 3,055,340).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515.

The examiner can normally be reached on Monday thru Friday 10:00-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kss

A handwritten signature in black ink, appearing to read 'Teri P. Luu', with a stylized, flowing script.

TERI P. LUU
SUPERVISORY PRIMARY EXAMINER